

AN ORDINANCE/ 8671 5

AMENDING CHAPTER 35, ARTICLE I, DIVISION 2 ADMINISTRATION AND ENFORCEMENT, OF THE SAN ANTONIO CITY CODE BY ADDING A NEW SECTION 35-1027 (ENTITLED "DEVELOPMENT PERMITS") TO ESTABLISH CRITERIA FOR ALLOWING DEVELOPMENT PROJECTS TO CONTINUE UNTIL COMPLETION UNDER SPECIFIC CIRCUMSTANCES UNDER THE DEVELOPMENT RULES AND REGULATIONS IN PLACE AT THE INITIATION OF THE CITY'S PERMITTING PROCESS AND PROVIDING FOR AN IMMEDIATE EFFECTIVE DATE UPON PASSAGE BY EIGHT (8) AFFIRMATIVE VOTES.

\* \* \* \* \*

WHEREAS, the Texas Legislature repealed Chapter 481, Subchapter I, Texas Government Code through the passage of Senate Bill 932, which became effective on September 1, 1997, eliminating the provision of State law; and

WHEREAS, the City Council of the City of San Antonio recognizes the importance of economic stability and enhancement within the City of San Antonio and its surrounding community, and has determined that the adoption of a local ordinance that protects the responsible development of real estate is vital for the public welfare; and

WHEREAS, the Mayor created an ad hoc committee to provide input in regard to continuing some of the protections afforded by the repealed State law while refining those protections, to the extent allowed by law, to assure development rights are provided only to those developments which are legitimate; and

WHEREAS, a majority of the committee has agreed to the provisions of this ordinance and said provisions have been reviewed and approved by the City of San Antonio Planning Commission;  
**NOW THEREFORE,**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** Chapter 35, Article I, Division 2, of the San Antonio City Code is hereby amended by adding a new Section 35-1027, entitled "Development Permits," having the titles and contained in the language set forth in the document attached hereto as Appendix I, which Appendix I is hereby adopted and approved as if fully set forth herein.

**SECTION 2.** In light of the immediate need to affirm stability to the economic and regulatory atmosphere within the City of San Antonio and its Extraterritorial Jurisdiction, an emergency is hereby declared so that upon receipt of eight affirmative votes, this ordinance shall be effective immediately upon passage. If this ordinance should be approved by fewer than eight affirmative votes, it shall be effective ten days from date of passage hereof.

**SECTION 3.** The City Clerk of the City of San Antonio is hereby directed to publish notice of this ordinance in a newspaper of general circulation within the San Antonio area within ten (10) days after its passage.

**SECTION 4.** Should any article, section, part, paragraph, sentence, phrase, clause or word of this ordinance, or any attachment or appendix hereof, for any reason be held illegal, inoperative or invalid, or if any exception to or limitation upon any general provision herein contained is held to be unconstitutional or invalid or ineffective, the remainder shall, nevertheless, stand effective and valid as if it has been enacted and ordained without the portion held to be unconstitutional, invalid or ineffective.

**SECTION 5.** Staff is directed to:

a) review the current Preliminary Overall Area Development Plan (POADP) process and propose amendment to the current POADP ordinance and all POADP applications submitted on or after September 1, 1997, will be required to conform, or be amended to conform, to the requirements of the amended POADP ordinance; and

b) review the current Unified Development Code requirement regarding Water Pollution Abatement Plan (WPAP) submissions and make a recommendation to the Planning Commission whether or not the City should continue to require WPAP submissions with plats and other permit applications.

**SECTION 6.** Within the next six months the San Antonio Water System is requested to provide the City Council with a report that should include the total acreage within the City of San Antonio and its extraterritorial jurisdiction subject to water and sewer contracts for property undeveloped, or not completely developed, as of September 1, 1997.

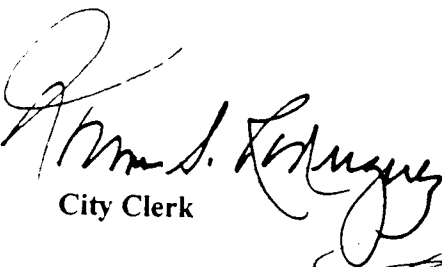
**SECTION 7.** It is officially found, determined and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place and subject matter of the public business to be considered at such meeting, including this Ordinance was given, all as required by Texas Revised Civil Statutes Annotated as amended Title 5, Chapter 551, Government Code.

**PASSED AND APPROVED** this 25<sup>th</sup> day of September, 1997.



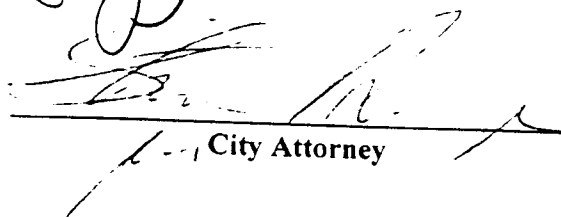
**M A Y O R**  
Howard W. Peak

**ATTEST:**



City Clerk

**APPROVED AS TO FORM:**



City Attorney

97-40

## APPENDIX I

### Section 35-1027. Development Permits.

- (a) *Scope.* This section shall only apply to ordinances, rules, regulations and incentives of the City of San Antonio that apply to the development of real property or the construction of buildings or structures on real property through a process requiring a Preliminary Overall Area Development Plan, Plat Application, Plat or Building Permit. This section shall not apply to Chapter 34 Article VI of the City Code entitled "Water Quality Control and Pollution Prevention."
- (b) *Definitions.*
  - (1) "City" means the City of San Antonio or any agency, bureau, department, division or commission of the City of San Antonio and any department, agency, board, commission or governing body of the City of San Antonio and its capacity of processing, approving or issuing permits.
  - (2) "Permit:" Within the context of this section, "permit" means a Preliminary Overall Area Development Plan, a plat, plat application or a building permit. Within the context of Permit Rights which existed prior to September 1, 1997, permit shall mean a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, or ordinance that must be obtained by a person in order to perform an action or initiate a project for which the permit is sought.
  - (3) "Project:" Within the context of this section, "project" shall mean an endeavor over which the City exerts its jurisdiction and for which a Preliminary Overall Area Development Plan, a plat, plat application or a building permit is required to initiate or continue the endeavor. Within the context of Permit Rights which existed prior to September 1, 1997, project shall mean an endeavor over which a regulatory agency exerts its jurisdiction and for which one or more permits are required to initiate or continue the endeavor.
  - (4) "Permit Rights" means the right of a property owner or developer to complete a project under the rules, regulations and ordinances in effect at the time the project was initiated through a permit as herein defined. When Permit Rights exist for property within the boundaries of a project, ordinances passed after the date the project is initiated shall not apply to the project except as specifically provided within this section.
  - (5) "Net Area:" Within the context of this section, net area shall mean total acreage within a Preliminary Overall Area Development Plan less the area within the 100

year flood plain and the area dedicated to conservation easement, natural area (such as greenbelt) and parks.

- (6) "Infrastructure expenses:" Within the context of this section, infrastructure expenses shall include engineering costs, impact fees, platting fees (including the amount of bond, trust agreement, or irrevocable letter of credit posted with the City to assure compliance with platting requirements), as well as necessary development costs actually paid (if such costs actually paid exceed or are necessary but not included infrastructure costs covered by the bond, trust agreement or irrevocable letter of credit) including off-site infrastructure costs that are necessary for plat approval of a specific parcel of real property. Further, a property owner or developer shall be allowed to include as infrastructure expenses, costs incurred by voluntary compliance with development ordinances including by way of example but not limitation, tree survey costs.
- (c) *Exemption from Permit Rights.* The following types of ordinances are exempt from this Section and will apply to a project or development regardless of the effective date of the ordinance or the existence of Permit Rights for the project:
  - (1) regulations relating to drainage, unless a plat application is on file with the City Planning Department and all necessary platting fees have been paid prior to the effective date of such ordinance;
  - (2) City zoning regulations that do not affect lot size, lot dimensions, lot coverage or building size;
  - (3) permits for the construction of buildings or structures intended for human occupancy or habitation that are issued pursuant to laws, ordinances, procedures, rules or regulations adopting the provisions of a uniform building, fire, electrical, plumbing or mechanical codes promulgated by a recognized national code organization or local amendments to any such codes enacted solely to address the imminent threats of destruction of property or injury to persons, unless such permits are less than six months old or construction has commenced under a valid permit;
  - (4) permits or orders issued under programs for which a state regulatory agency or the City has received authorization, delegation or approval from the federal government to implement an equivalent state or local program in lieu of or as a part of the federal program;
  - (5) fees lawfully imposed by the City in connection with development permits;
  - (6) regulations to prevent imminent destruction of property or injury to persons;
  - (7) construction standards for public works located on public lands and easements;

- (8) regulations for utility connections; or
  - (9) regulations for annexations.
- (d) *Basis for Permit Rights.* The following criteria will be used by the City in determining the existence of rights for projects initiated after September 1, 1997. The following permits may be relied on by a property owner or developer to establish Permit Rights for property that is the subject of the permit. Provided, however, a minor plat that plats only easements shall not confer any Permit Rights. The Permit Rights acquired in reliance on one of the types of permits indicated below will expire unless the action required to maintain Permit Rights is taken within the time frame indicated for each permit type:
- (1) *Preliminary Overall Area Development Plan (POADP).* Permit Rights will be recognized on the property which is the subject of a POADP that has been approved by the City Planning Department. The Permit Rights recognized for property located within an approved POADP will expire unless a final plat is approved within eighteen (18) months from the approval of the POADP that plats, at least 8% of the net area of the POADP area **OR** that requires at least \$500,000 in infrastructure expenses if the POADP is 1,000 acres or less or at least \$1,000,000 if the POADP is more than 1,000 acres.

Further, the Permit Rights for property within an approved POADP will expire unless 50% of the net area within the approved POADP is the subject of final plats or development within 10 years from the date of approval of the POADP. The remaining 50% must obtain final plat approval or be developed within 10 years after the initial 50% of the net area within the POADP has been platted or developed. Unless specific provisions to the contrary exist in an individual ordinance or City Code provision, the filing of an amending POADP, plat, or replat will not result in a loss of Permit Rights provided that the required area of acreage within the POADP platted or value of infrastructure expenses do not fall below the amounts indicated above as a result of the amendment or replat.

- (2) *Plat Applications.* Permit Rights will be recognized on the property that is the subject of a plat application that has been filed with the City Planning Department, provided all necessary platting fees have been paid. The rights recognized for property located within such a plat application will expire unless the plat application is heard by and approved by the Director of Planning or the Planning Commission within eighteen (18) months from the date the plat application is filed with the City Planning Department.

- (3) *Plats.* Permit Rights will be recognized on the property which is the subject of a plat that has been approved by the City Planning Commission or Director of Planning. The Permit Rights recognized for property located within an approved plat will expire unless the plat is recorded in the Bexar County Deed Records within three (3) years from the date of approval by the City Planning Commission or Director of Planning.
- (4) *Building Permits.* A building permit may be relied on as a basis for Permit Rights for property identified in the site plan submitted to the City as part of the building permit application. However, rights that are based on a building permit will expire unless construction authorized by the building permit is begun within six months from the date the building permit is issued.
- (e) Permit Rights conferred by this section shall not extend beyond the time periods prescribed herein except by the granting of a variance from the time limit as provided herein. Under no circumstances shall the extension of a time limit extend the Permit Rights conferred herein except through the variance provision of this section.
- (f) *Permit Rights Process.* After September 1, 1997, application may be made to the Director of Planning for recognition of Permit Rights for a particular project by completion of a form provided by the Planning Department that indicates which of the permit types identified in (a) above, are being relied on by the applicant for establishment of Permit Rights. The applicant for Permit Rights shall provide the Planning Department with a completed application together with a permit application review fee in the amount of \$145.00 and two copies of any documents on which the applicant is relying to establish Permit Rights. After receiving an application for Permit Rights, the Planning Department shall review the application and approve, deny or request additional information to be provided for consideration of the application within twenty (20) working days. In the event the Planning Department does not respond to an application for Permit Rights within twenty (20) working days, the application will be considered denied. Provided, however, the time period may be extended upon the written request of the applicant. Upon review of the application, if the Planning Department finds that the applicant has provided sufficient information to establish that one or more permit(s) exists on a project, they shall issue a certificate to the applicant recognizing Permit Rights for the project. The certificate recognizing Permit Rights shall be dated and signed by the individual reviewing the application. The Planning Director shall also review all certificates prior to issuance. The certificate shall also clearly indicate the term and conditions (indicated above) required for the continuance of the Permit Rights being recognized. In the event the Planning Department requests additional information for consideration of an application, the applicant shall be notified in writing within the required time period of specifically what information must be submitted in order to complete the review of the application.

For the initial ninety (90) days subsequent to the enactment of this section, the Planning Department shall review and respond to an application for Permit Rights within forty (40) working days of its receipt. Thereafter, the period of review shall be twenty (20) working days.

The Planning Department shall create a file of all certificates issued pursuant to this provision that will be available to the public during regular business hours. At a minimum the file should contain all certificates issued for a three calendar year period and should be reviewed annually to remove certificates more than three years old. Certificates more than three years old shall be made available in conformance with the Public Information Act.

The Director of Planning shall file a report with the Planning Commission at a public hearing not later than six (6) months after the enactment of this provision that lists all Permit Rights certificates issued pursuant to this provision and the person or business entity to whom they were issued.

- (g) *Permit Rights Process Appeal.* In the event an applicant for recognition of Permit Rights is aggrieved by an action taken regarding the recognition of those rights or the application of the above requirements, the applicant may appeal the decision of the Planning Department staff to the Planning Commission by filing a request for appeal with the Planning Director within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. The application for appeal shall be made in writing and shall contain the applicant's rationale for requesting the appeal. The Planning Director shall place the appeal on the agenda of the Planning Commission and the Planning Commission shall hold a hearing on the appeal and make its ruling within forty-five (45) days from the date the request for appeal was filed. If the Planning Commission denies all or part of the relief requested in the appeal, the applicant may make a final appeal to the City Council by filing a notice of final appeal in writing together with payment of \$75.00 to offset the City's costs with the office of the City Clerk no later than the tenth (10) day following the party's receipt of the written decision of the Planning Commission from which the final appeal is brought. The City Clerk shall schedule the hearing of the final appeal at the earliest regularly scheduled meeting of the City Council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the City Council shall be final.
- (h) *Variance.* An individual, or business entity, that has Permit Rights may request a variance from the time limit, required action, or term, that would otherwise cause the Permit Rights to expire. An individual requesting a variance must make written application to the Director of Planning and pay a variance application fee in the amount of \$145.00. The request for variance must identify the specific provisions for which a variance is being requested and the reasons the applicant feels justify the granting of the variance. The Director of Planning shall review the application for variance and provide a written recommendation with regard to whether the variance should be granted, conditionally granted or denied to the Planning Commission within thirty days from the

date the application or variance is filed. In the event the Planning Commission fails to make a ruling on the variance within sixty days from the date the application for variance is filed, the application for variance shall be deemed denied. Provided, however, the time period may be extended upon the written request of the applicant. In order to grant a variance from the provisions of this section, the Planning Commission must find, that:

- (i) the applicant would suffer a hardship in the absence of a variance that is not the result of the applicant's own negligence; and
  - (ii) the applicant has been actively attempting to pursue and complete development of the project that is the subject of the Permit Rights; and
  - (iii) compliance with rules and regulations passed after the recognition of Permit Rights would cause a substantial economic hardship to the developer/property owner that would preclude the capability of completing the project in a reasonable and prudent manner.
- (i) *Variance Appeal.* If the Planning Commission denies all or part of the relief requested in a request for variance, the applicant may make an appeal to the City Council by filing a notice of appeal in writing together with a payment of \$75.00 to offset the City's costs with the office of the City Clerk for the City no later than the tenth (10) day following the party's receipt of the written decision of the Planning Commission from which the final appeal is brought. The City Clerk shall schedule the hearing of the appeal at the earliest regularly scheduled meeting of the City Council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the City Council shall be final.
- (j) *Previously Recognized Permit Rights.* Property which qualified for Permit Rights prior to September 1, 1997, due to the existence of Chapter 481, Subchapter I, Texas Government Code, or due to the specific provisions of an ordinance enacted in reliance on said provision of the Government Code will continue to be recognized by the City; provided that Permit Rights existing prior to September 1, 1997, that are based on the existence of a POADP shall not expire until eighteen (18) months after the effective date of these regulations, but shall expire immediately thereafter unless a final plat has been approved within eighteen (18) months after the effective date of the regulations that plats 8% of the net area within the POADP **OR** that requires at least \$500,000 in infrastructure expenses. Further, the Permit Rights for property within an approved POADP will expire unless 50% of the net area within the approved POADP is the subject of final plats or development within 10 years from the effective date of this section. The remaining 50% must obtain final plat approval or be developed within 10 years after the initial 50% of the net area within the POADP has been platted or developed. A minor plat that plats only easements shall not confer any Permit Rights or satisfy any obligation hereunder.

A water or sewer contract obtained prior to September 1, 1997 shall be recognized by the City as providing the property identified in the contract as of the date of execution of the

contract Permit Rights; however, the Permit Rights based on the water or sewer contracts will expire unless the required infrastructure is built or required obligations are fulfilled within the term of the contract.

- (k) Nothing herein would prohibit the voluntary compliance with any future ordinance, regulation or incentive.

erty will be denied for a period of three (3) years. In addition, the applicant shall not be entitled to have issued to him by any city office a permit allowing any curb cuts on subject property for a period of three (3) years from and after the date of such demolition.

- (4) If demolition of a landmark or of any building, object, site, or structure found to have significance or located in an historic district, or located in the River Walk area, or located on publicly-owned property, or on a public right-of-way occurs without a permit or a certificate of appropriateness, then the license of the company, individual, principal owner; or its or his successor in interest performing such demolition shall be revoked for a period of five (5) years.

(d) Criminal penalties regarding Article VII. Any persons, firm or corporation violating any section of other part of Article VII of this chapter shall be guilty of a misdemeanor, and each shall be deemed guilty of a separate violation for each day during which any violation hereof is committed. Upon conviction, each violation shall be punishable by a fine not to exceed one thousand dollars (\$1,000.00) per day for each day of each violation.

(Ord. No. 65513, § 2(f), 8-13-87; Ord. No. 65853, Att. 1, 10-7-87; Ord. No. 67518, 7-21-88; Ord. No. 78948, § 1(I), 10-21-93; Ord. No. 80910, § 2(Att. 2(1)), 10-6-94)

#### **Sec. 35-1025. Remedies.**

(a) *Offenses and liabilities preserved.* All offenses committed and all liabilities incurred prior to the effective date of this chapter shall be treated as though all prior applicable zoning ordinances and amendments thereto were in full force and effect for the purposes of sustaining any proper suit, action or prosecution with respect to such offenses and liabilities.

(b) *Effect of other ordinances and regulations.* Whenever higher or more restrictive standards are established by the provisions of any other applicable statute, ordinance or regulation than

are established by the provisions of this chapter, the provisions of such other statute, ordinance or regulation shall govern.

(c) *Effect of private covenants.* Nothing herein contained shall be construed to render inoperative any restriction established by covenants running with the land.

(Ord. No. 65513, § 2(f), 8-13-87)

#### **Sec. 35-1026. Nuisances.**

(a) Nothing in this chapter shall be construed as repealing any ordinance of the city regulating nuisances or permitting uses which were prohibited prior to the adoption of this chapter.

(b) The erection, threat of erection, construction or maintenance of any building or the use of any premises in violation of the provisions of this chapter shall be, and is hereby declared to be, a public nuisance when such threat, building or use of the premises constitutes a fire, health or traffic hazard or interferes with the reasonable peaceful enjoyment of their homes by citizens living in the vicinity of such buildings or premises.

(c) In addition to the other remedies provided for the enforcement of this chapter, the city council is authorized and empowered to hear and determine the facts in cases of alleged nuisances and where it finds that facts exist which constitute a nuisance as specified in subsection (b) above, the city council may order the cessation and abatement of such nuisance.

(Ord. No. 65513, § 2(f), 8-13-87)

#### **Sec. 35-1027. Development permits.**

(a) *Scope.* This section shall only apply to ordinances, rules, regulations and incentives of the City of San Antonio that apply to the development of real property or the construction of buildings or structures on real property through a process requiring a preliminary overall area development plan, plat application, plat or building permit. This section shall not apply to Chapter 34 Article VI of the City Code entitled "Water Quality Control and Pollution Prevention."

(b) *Definitions.*

*City* means the City of San Antonio or any agency, bureau, department, division or commission of the City of San Antonio and any department, agency, board, commission or governing body of the City of San Antonio and its capacity of processing, approving or issuing permits.

*Infrastructure expenses:* Within the context of this section, infrastructure expenses shall include engineering costs, impact fees, platting fees (including the amount of bond, trust agreement, or irrevocable letter of credit posted with the city to assure compliance with platting requirements), as well as necessary development costs actually paid (if such costs actually paid exceed or are necessary but not included infrastructure costs covered by the bond, trust agreement or irrevocable letter of credit) including off-site infrastructure costs that are necessary for plat approval of a specific parcel of real property. Further, a property owner or developer shall be allowed to include as infrastructure expenses, costs incurred by voluntary compliance with development ordinances including by way of example but not limitation, tree survey costs.

*Net area:* Within the context of this section, net area shall mean total acreage within a preliminary overall area development plan less the area within the 100-year floodplain and the area dedicated to conservation easement, natural area (such as greenbelt) and parks.

*Permit:* Within the context of this section, "permit" means a preliminary overall area development plan, a plat, plat application or a building permit. Within the context of permit rights which existed prior to September 1, 1997, permit shall mean a license, certificate, approval, registration, consent, permit, or other form of authorization required by law, rule, regulation, or ordinance that must be obtained by a person in order to perform an action or initiate a project for which the permit is sought.

*Permit rights* means the right of a property owner or developer to complete a project under the rules, regulations and ordinances in effect at the time the project was initiated through a permit as herein defined. When permit rights exist for property within the boundaries of a project, ordinances passed after the date the

project is initiated shall not apply to the project except as specifically provided within this section.

*Project:* Within the context of this section, "project" shall mean an endeavor over which the city exerts its jurisdiction and for which a preliminary overall area development plan, a plat, plat application or a building permit is required to initiate or continue the endeavor. Within the context of permit rights which existed prior to September 1, 1997, project shall mean an endeavor over which a regulatory agency exerts its jurisdiction and for which one (1) or more permits are required to initiate or continue the endeavor.

(c) *Exemption from permit rights.* The following types of ordinances are exempt from this section and will apply to a project or development regardless of the effective date of the ordinance or the existence of permit rights for the project:

- (1) Regulations relating to drainage, unless a plat application is on file with the city planning department and all necessary platting fees have been paid prior to the effective date of such ordinance;
- (2) City zoning regulations that do not affect lot size, lot dimensions, lot coverage or building size;
- (3) Permits for the construction of buildings or structures intended for human occupancy or habitation that are issued pursuant to laws, ordinances, procedures, rules or regulations adopting the provisions of a uniform building, fire, electrical, plumbing or mechanical codes promulgated by a recognized national code organization or local amendments to any such codes enacted solely to address the imminent threats of destruction of property or injury to persons, unless such permits are less than six (6) months old or construction has commenced under a valid permit;
- (4) Permits or orders issued under programs for which a state regulatory agency or the city has received authorization, delegation or approval from the federal government to implement an equivalent state or local program in lieu of or as a part of the federal program;

- (5) Fees lawfully imposed by the city in connection with development permits;
- (6) Regulations to prevent imminent destruction of property or injury to persons;
- (7) Construction standards for public works located on public lands and easements;
- (8) Regulations for utility connections; or
- (9) Regulations for annexations.

(d) *Basis for permit rights.* The following criteria will be used by the city in determining the existence of rights for projects initiated after September 1, 1997. The following permits may be relied on by a property owner or developer to establish permit rights for property that is the subject of the permit. Provided, however, a minor plat that plats only easements shall not confer any permit rights. The permit rights acquired in reliance on one (1) of the types of permits indicated below will expire unless the action required to maintain permit rights is taken within the time frame indicated for each permit type:

- (1) *Preliminary overall area development plan (POADP).* Permit rights will be recognized on the property which is the subject of a POADP that has been approved by the city planning department. The permit rights recognized for property located within an approved POADP will expire unless a final plat is approved within eighteen (18) months from the approval of the POADP that plats, at least eight (8) percent of the net area of the POADP area OR that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses if the POADP is one thousand (1,000) acres or less or at least one million dollars (\$1,000,000.00) if the POADP is more than one thousand (1,000) acres.

Further, the permit rights for property within an approved POADP will expire unless fifty (50) percent of the net area within the approved POADP is the subject of final plats or development within ten (10) years from the date of approval of the POADP. The remaining fifty (50) percent must obtain final plat approval or be

developed within ten (10) years after the initial fifty (50) percent of the net area within the POADP has been platted or developed. Unless specific provisions to the contrary exist in an individual ordinance or City Code provision, the filing of an amending POADP, plat, or replat will not result in a loss of permit rights provided that the required area of acreage within the POADP platted or value of infrastructure expenses do not fall below the amounts indicated above as a result of the amendment or replat.

- (2) *Plat applications.* Permit rights will be recognized on the property that is the subject of a plat application that has been filed with the city planning department, provided all necessary platting fees have been paid. The rights recognized for property located within such a plat application will expire unless the plat application is heard by and approved by the director of planning or the planning commission within eighteen (18) months from the date the plat application is filed with the city planning department.
- (3) *Plats.* Permit rights will be recognized on the property which is the subject of a plat that has been approved by the city planning commission or director of planning. The permit rights recognized for property located within an approved plat will expire unless the plat is recorded in the Bexar County Deed Records within three (3) years from the date of approval by the city planning commission or director of planning.
- (4) *Building permits.* A building permit may be relied on as a basis for permit rights for property identified in the site plan submitted to the city as part of the building permit application. However, rights that are based on a building permit will expire unless construction authorized by the building permit is begun within six (6) months from the date the building permit is issued.

(e) Permit rights conferred by this section shall not extend beyond the time periods prescribed herein except by the granting of a variance from the time limit as provided herein. Under no circumstances shall the extension of a time limit extend the permit rights conferred herein except through the variance provision of this section.

(f) Permit rights process. After September 1, 1997, application may be made to the director of planning for recognition of permit rights for a particular project by completion of a form provided by the planning department that indicates which of the permit types identified in (a) above, are being relied on by the applicant for establishment of permit rights. The applicant for permit rights shall provide the planning department with a completed application together with a permit application review fee in the amount of one hundred forty-five dollars (\$145.00) and two (2) copies of any documents on which the applicant is relying to establish permit rights. After receiving an application for permit rights, the planning department shall review the application and approve, deny or request additional information to be provided for consideration of the application within twenty (20) working days. In the event the planning department does not respond to an application for permit rights within twenty (20) working days, the application will be considered denied. Provided, however, the time period may be extended upon the written request of the applicant. Upon review of the application, if the planning department finds that the applicant has provided sufficient information to establish that one (1) or more permit(s) exists on a project, they shall issue a certificate to the applicant recognizing permit rights for the project. The certificate recognizing permit rights shall be dated and signed by the individual reviewing the application. The planning director shall also review all certificates prior to issuance. The certificate shall also clearly indicate the term and conditions (indicated above) required for the continuance of the permit rights being recognized. In the event the planning department requests additional information for consideration of an application, the applicant shall be notified in writing within the required time period of specifically what information must be submitted in order to complete the review of the application.

For the initial ninety (90) days subsequent to the enactment of this section, the planning department shall review and respond to an application for permit rights within forty (40) working days of its receipt. Thereafter, the period of review shall be twenty (20) working days.

The planning department shall create a file of all certificates issued pursuant to this provision that will be available to the public during regular business hours. At a minimum the file should contain all certificates issued for a three-calendar year period and should be reviewed annually to remove certificates more than three (3) years old. Certificates more than three (3) years old shall be made available in conformance with the Public Information Act.

The director of planning shall file a report with the planning commission at a public hearing not later than six (6) months after the enactment of this provision that lists all permit rights certificates issued pursuant to this provision and the person or business entity to whom they were issued.

(g) *Permit rights process appeal.* In the event an applicant for recognition of permit rights is aggrieved by an action taken regarding the recognition of those rights or the application of the above requirements, the applicant may appeal the decision of the planning department staff to the planning commission by filing a request for appeal with the planning director within fifteen (15) calendar days from the date the applicant is notified of the adverse decision or action taken under these requirements. The application for appeal shall be made in writing and shall contain the applicant's rationale for requesting the appeal. The planning director shall place the appeal on the agenda of the planning commission and the planning commission shall hold a hearing on the appeal and make its ruling within forty-five (45) days from the date the request for appeal was filed. If the planning commission denies all or part of the relief requested in the appeal, the applicant may make a final appeal to the city council by filing a notice of final appeal in writing together with payment of seventy-five dollars (\$75.00) to offset the city's costs with the office of the city clerk no later than the tenth (10) day

following the party's receipt of the written decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the final appeal at the earliest regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

(h) *Variance*. An individual, or business entity, that has permit rights may request a variance from the time limit, required action, or term, that would otherwise cause the permit rights to expire. An individual requesting a variance must make written application to the director of planning and pay a variance application fee in the amount of one hundred forty-five dollars (\$145.00). The request for variance must identify the specific provisions for which a variance is being requested and the reasons the applicant feels justify the granting of the variance. The director of planning shall review the application for variance and provide a written recommendation with regard to whether the variance should be granted, conditionally granted or denied to the planning commission within thirty (30) days from the date the application or variance is filed. In the event the planning commission fails to make a ruling on the variance within sixty (60) days from the date the application for variance is filed, the application for variance shall be deemed denied. Provided, however, the time period may be extended upon the written request of the applicant. In order to grant a variance from the provisions of this section, the planning commission must find, that:

- (i) The applicant would suffer a hardship in the absence of a variance that is not the result of the applicant's own negligence; and
- (ii) The applicant has been actively attempting to pursue and complete development of the project that is the subject of the permit rights; and
- (iii) Compliance with rules and regulations passed after the recognition of permit rights would cause a substantial economic hardship to the developer/property owner

that would preclude the capability of completing the project in a reasonable and prudent manner.

(i) *Variance appeal*. If the planning commission denies all or part of the relief requested in a request for variance, the applicant may make an appeal to the city council by filing a notice of appeal in writing together with a payment of seventy-five dollars (\$75.00) to offset the city's costs with the office of the city clerk for the city no later than the tenth (10) day following the party's receipt of the written decision of the planning commission from which the final appeal is brought. The city clerk shall schedule the hearing of the appeal at the earliest regularly scheduled meeting of the city council which will allow compliance with the requirements of the Texas Open Meetings Act. The decision of the city council shall be final.

(j) *Previously recognized permit rights*. Property which qualified for permit rights prior to September 1, 1997, due to the existence of Chapter 481, Subchapter I, Texas Government Code, or due to the specific provisions of an ordinance enacted in reliance on said provision of the Government Code will continue to be recognized by the city; provided that permit rights existing prior to September 1, 1997, that are based on the existence of a POADP shall not expire until eighteen (18) months after the effective date of these regulations, but shall expire immediately thereafter unless a final plat has been approved within eighteen (18) months after the effective date of the regulations that plats eight (8) percent of the net area within the POADP OR that requires at least five hundred thousand dollars (\$500,000.00) in infrastructure expenses. Further, the permit rights for property within an approved POADP will expire unless fifty (50) percent of the net area within the approved POADP is the subject of final plats or development within ten (10) years from the effective date of this section. The remaining fifty (50) percent must obtain final plat approval or be developed within ten (10) years after the initial fifty (50) percent of the net area within the POADP has been platted or developed. A minor plat that plats only easements shall not confer any permit rights or satisfy any obligation hereunder.

A water or sewer contract obtained prior to September 1, 1997 shall be recognized by the city as providing the property identified in the contract as of the date of execution of the contract permit rights; however, the permit rights based on the water or sewer contracts will expire unless the required infrastructure is built or required obligations are fulfilled within the term of the contract.

(k) Nothing herein would prohibit the voluntary compliance with any future ordinance, regulation or incentive.

(Ord. No. 86715, § 1, 9-25-97)

**Secs. 35-1028—35-1040. Reserved.**

### DIVISION 3. DEFINITIONS

#### **Sec. 35-1041. Definitions.**

For the purposes of this chapter, the following terms, phrases, words and their derivations shall have the meaning given in this section.

*Accessory use or building:* A subordinate use or building customarily incident to and located on the same lot with the main use or building.

*Adult bookstore:* A business enterprise which has a substantial or significant portion of its stock in trade in, or which has as its main purpose the offering for sale of books, magazines, pamphlets, pictures, drawings, photographs, motion picture films or sound recordings, or printed, visual or audio material of any kind, which are characterized by their emphasis on the description or depiction of specified anatomical areas or specified sexual activities; or a business establishment which offers for sale books, magazines, pamphlets,